

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
File No. 5:13-CV-66**

DIANA LOUISE HOUCK

PLAINTIFF

V.

**LIFESTORE BANK, F.S.A., GRID
FINANCIAL SERVICES, INC., and
SUBSTITUTE TRUSTEE SERVICES,
INC.**

DEFENDANTS

**MEMORANDUM OF LAW
IN SUPPORT OF
MOTION TO REOPEN CASE**

COMES NOW Plaintiff, by and through counsel, and respectfully requests that this Court reopen this case, which was terminated without notice on January 29, 2021. In support of this motion, the Plaintiff shows this Court the following:

This case was referred to the Bankruptcy Court of the Western District of North Carolina by Order dated September 22, 2015. (Doc. 92). The case was referred “for recommended findings of fact and conclusions of law.” *Id.* By Order entered February 8, 2018, (Doc. 103) this case was stayed “pending resolution of the referral of the § 362 claim to the Bankruptcy Court.” *Id.*

That Adversary Proceeding in the Bankruptcy Court is No. 15-5028 and that Court entered findings of fact, conclusions of law and an order granting judgment to the Plaintiff, entered into this case on October 6, 2020. (Doc. 105). The Defendant in that case filed a notice of appeal, which was opened in this Court as Case No. 5:20-CV-171. That appeal was voluntarily dismissed by Order of the Bankruptcy Court, entered December 3, 2020. (Doc. 2, 5:20-CV-171). That case was terminated the same day.

The case *sub judice* is still stayed pursuant to the February 8, 2018, order. The stay was never lifted and there has never been a final judgment or an order closing the case. Federal Rule of Civil Procedures 54 requires a final judgment to be entered in a case for finality. Moreover:

The text indicates that [28 U.S.C.] § 157 is simply a procedural mechanism authorizing a bankruptcy court, upon referral from a district court (1) to hear constitutionally core claims to final judgment, subject to appeal in the district court, and (2) to recommend findings of fact and conclusions of law to the district court in constitutionally non-core matters for de novo review and final judgment by the district court.

Houck v. Substitute Tr. Servs., Inc., 791 F.3d 473, 482 (4th Cir. 2015). This is the resolution for which the stay was entered. Pursuant to the law of this case, the Bankruptcy Court's final judgment for Adversary Proceeding No. 15-5028 was not the final judgment for the District case 5:13-CV-66. There was one final judgment entered previously in this case on February 20, 2014, (Doc. 72) but that judgment was vacated by Order from the Fourth Circuit. "The judgment of the district court is vacated[.]" *Id.*, at 487. This *vacatur* means that no judgment has ever been entered in the District case at bar. *See, Rice v. Alpha Sec., Inc.*, 556 F. App'x 257, 259-60 (4th Cir. 2014) (holding that when a nonsuit was vacated, "it ceased to exist, and effectively, it never did"). The Plaintiff is simply seeking finality in this case, and the Plaintiff believes that requires a final judgment.

WHEREFORE, the Plaintiff respectfully requests that the Court reopen this case to enter an Order and Final Judgment or for such other and further relief as this Court deems just and fair.

TODAY is March 5, 2021.

COLLUM & PERRY

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CERTIFICATE OF SERVICE

I, M. Shane Perry, do hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REOPEN CASE** in this action was served electronically through the CM/ECF system to:

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TODAY is March 5, 2021.

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